

Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand and Subhas C. Bansra. Case 20-CA-16430

July 30, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

On April 26, 1982, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand, San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: This proceeding, in which a hearing was conducted on March 1, 1982, is based on an unfair labor practice charge filed against Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand, herein called Respondent, by Subhas C. Bansra, herein called Bansraj. The charge was filed July 16, 1981, and on August 26, 1981, a complaint was issued against Respondent by the Regional Director for Region 20, of the National Labor Relations Board, on behalf of the Board's General Counsel, alleging that on July 14, 1981, Respondent violated Section 8(a)(1) of the National Labor Relations Act, herein

called the Act, by discharging Bansraj, who was a supervisor within the meaning of Section 2(11) of the Act, because Bansraj refused to commit unfair labor practices. Respondent filed an answer which admitted certain factual allegations but denied engaging in the alleged unfair labor practices.¹

Upon the entire record,² from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs filed by Respondent and the General Counsel, I make the following:

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES

A. The Background

Respondent is a sole proprietorship owned by Earl Kuhns which operates a chain of adult bookstores, four of which are located in San Francisco, California, on the following streets: 16th, Mason, Geary, and Taylor. During the period of time material herein the Taylor Street store, which is the main store, was undergoing extensive remodeling. Kuhns has little contact with the day-to-day operation of the stores. During the time material herein Bansraj, who was employed by Kuhns as Respondent's general manager, was responsible for the day-to-day operation of the stores. Assistant Manager Kenneth Garrett, who is admittedly a statutory supervisor, assisted him.

In December 1978, the Union commenced a campaign to organize the clerks employed in Respondent's San Francisco stores. In March 1979, this campaign culminated in a Board-conducted representation election which the Union won. Upon charges filed by the Union in Cases 20-CA-14319 and 20-CA-14456, the Board in *Earl Kuhns d/b/a Frenchy's K & T and Earl's News Stand*³ held that during the period from January to March 1979 Respondent violated Section 8(a)(3) and (1) of the Act by discharging seven employees and reassigning two employees to more onerous work because of the employees' union activities and further violated Section 8(a)(1) by interrogating employees about their union activities; by rewarding employees for providing Respondent with information about the union activities of other employees, by threatening employees with different kinds of economic reprisals if they supported the Union; by promising employees improved benefits of employment if they did not support the Union; by creating the impression that the employees' union activities were under surveillance; and by informing employees that it would be futile for them to support the Union.

In June 1979 after the close of the hearing in Cases 20-CA-14319 and 20-CA-14456, Kuhns, Bansraj, and

¹ In its answer, Respondent admits that it meets the National Labor Relations Board's applicable discretionary jurisdictional standard and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Also, Respondent admits that the labor organization involved in this case, Retail Clerks Union, Local 648, herein called the Union, is a labor organization within the meaning of Sec. 2(5) of the Act.

² The General Counsel's motion to correct the spelling of the names of Danny Meadow and Mahendré Prashad in the transcript is granted.

³ 247 NLRB 1212 (1980).

Garrett met with Respondent's attorney Joseph Rhine. Attorney Rhine informed Kuhns that he thought it was "most likely" Kuhns would have to reinstate the discharged employees who were alleged in the unfair labor practice cases to have been illegally discharged. Kuhns indicated he was not happy about this prospect because he did not want the Union "to run his stores." Rhine told him that if the Court ordered him to reinstate the employees he would have no choice. Bansraj asked how they expected him to cope with the reinstated workers. Rhine suggested that Bansraj create a separate personnel file for each of the clerks who were employed during the Union's organizational campaign and that whenever Bansraj observed one of these employees doing something wrong to issue them a written disciplinary warning and place a copy of the warning in the employee's personnel file. Rhine stated that if these written warnings were appropriately issued the recipients would be unable to grieve to the Union or the Board. Kuhns agreed with Rhine's suggestion and specifically instructed Bansraj that he was particularly interested in having Bansraj issue written warnings to those employees who were employed by Respondent during the union election and who testified against the Company during the unfair labor practice hearing in Cases 20-CA-14319 and 20-CA-14456.

On August 30, 1979, the U.S. District Court for the Northern District of California pursuant to a petition filed by the Board for a preliminary injunction, pending the Board's disposition of the unfair labor practices alleged in Cases 20-CA-14319 and 20-CA-14456, ordered Respondent to reinstate the several employees whom the Board in these cases alleged were illegally terminated. On October 25, 1979, the court, pursuant to the Board's petition alleging that Respondent was in civil contempt of the court's August 30, 1979, Order, issued an order adjudging Respondent to be in civil contempt, as alleged, and ordered Respondent to comply with the terms of the August 30 order under threat of penalty. Immediately following the issuance of this order Bansraj went to attorney Rhine's office to execute an affidavit to be submitted to the court stating that Respondent had reinstated the employees and had otherwise complied with the court's order. Kuhns, who was also present, told Bansraj that as soon as the employees who were reinstated came to work that Bansraj should get rid of them as quickly as possible.

Prior to Kuhns' instruction to Bansraj in June 1979 to maintain a personnel file for each of the employees who had been employed during the Union's organization campaign, to issue written disciplinary warnings to these employees when he observed them engage in misconduct, and to place a copy of the reprimand in the employees' files, Respondent did not maintain personnel files for its employees and there is no evidence that Respondent previously employed a system of written disciplinary warnings. Bansraj complied with the instruction to maintain personnel files for the employees who had been employed during the Union's organizational campaign. He kept these files in his briefcase. Kuhns never asked to see these files.

Besides instructing Bansraj to issue written disciplinary warnings to the employees who had been employed during the Union's organizational campaign, if they engaged in misconduct, Kuhns later in June 1979 directed Bansraj to issue written disciplinary warnings to any employee who was late for work or who was absent due to illness without a doctor's excuse.⁴ Thereafter, from 1979 until Bansraj's discharge in 1981, Kuhns, on several occasions told Bansraj he felt that employee discipline was not strict enough and to be sure to issue written disciplinary warnings to employees if they violated work rules. Kuhns told Bansraj that he wanted employees to be issued three disciplinary warning notices before they were fired.

Despite Kuhns' above-described instructions about issuing written disciplinary warnings to the employees, Bansraj, from 1979 until his discharge in July 1981, issued only one such warning. When Kuhns during this period asked whether Bansraj was issuing employees written disciplinary warnings, Bansraj falsely answered in the affirmative.

During the period from 1979 to 1981 on several occasions when Kuhns received correspondence from the Union grieving about a matter or from the Board asking that Kuhns comply with the Board's Decision and Order in Cases 20-CA-14319 and 20-CA-14456, Kuhns informed Bansraj that the Board and the Union were "just f--- me over" and asked Bansraj whether he was issuing written disciplinary warnings to the employees and whether anyone was scheduled to be discharged and instructed Bansraj to get rid of the union members as quickly as possible. Bansraj falsely replied that he was in fact issuing written warnings and with respect to Kuhns' question about who was next to be discharged gave an evasive answer.

In 1981 Bansraj was scheduled to take his vacation June 15. However, in May 1981 Garrett asked whether Bansraj could postpone his vacation until late June because on June 15 Respondent was closing the 16th Street store and transferring everything from that store to the Taylor Street store and because of this Bansraj's presence was necessary. Bansraj agreed to delay his vacation until July 1, 1981.

On Friday, June 26, 1981, Bansraj, in the presence of the Company's bookkeeper, Danny Meadows, informed Kuhns that "the live show has finally begun and so I'll go on my vacation the 1st of July." Kuhns answered, "you deserve one."

On Tuesday, June 30, while Bansraj was working at the Taylor Street store, Respondent's accountant Mike Franklin, in the presence of Kuhns, asked Bansraj to do a lengthy project for Franklin which would take several days. Bansraj informed him that he was starting his vacation the next day and would return July 15. Neither Franklin nor Kuhns responded.

Later on June 30, in the evening, Garrett phoned Bansraj at his home and stated that Kuhns did not want Bansraj to go on vacation July 1 because he needed him. Garrett did not explain why Kuhns needed him. Bansraj

⁴ The record reveals that these two work rules were new rules instituted for the first time by Kuhns in June 1979.

replied that he had already made his vacation plans. Garrett advised him that Kuhns did not want him to take his vacation at that time and warned Bansraj that if he went on vacation he would no longer be Respondent's general manager but instead would be the manager of the Taylor Street store. Bansraj answered that he accepted the demotion and would go on vacation. Garrett told him to turn in whatever belonged to the Company in his possession. The next day, July 1, before leaving on his vacation, Bansraj went to the Taylor Street store and gave Garrett his keys, the combination to the safe, and all of the files he had in his possession which included the employees' personnel files he had been maintaining.⁵

On July 14, 1981, upon his return from vacation, Bansraj phoned the Taylor Street store and spoke with Garrett. Bansraj stated he was back from vacation and would come to work the next day. Garrett informed him that Kuhns did not need him. Bansraj asked "why." Garrett stated that when Respondent needed him the most he went on vacation. Bansraj replied that he realized that Kuhns was no longer going to employ him as general manager but, as he had told Garrett on June 30, he was accepting the "option" offered to him of being manager of the Taylor Street store. Garrett replied that Kuhns was withdrawing that "option." Bansraj asked "why." Garrett replied that Bansraj had not paid the bills and taxes on time. Bansraj asked Garrett how he could pay the bills and taxes when there was no money for him to do so because of the cost of the remodeling of the Taylor Street store. Garrett in response stated, "there were various other reasons" for his discharge. Bansraj asked "such as what." Garrett replied that Kuhns had discovered that Bansraj had not issued written disciplinary warnings to the union members and that because of this Respondent could not get rid of the union members as quickly as they intended and that Bansraj had cost Respondent a lot of money by his failure to issue the aforesaid written warnings.⁶

It is undisputed that Bansraj, who, as general manager was responsible for the payment of Respondent's bills

and taxes, failed to pay a substantial number of bills which were past due. It is also undisputed that the reason for his failure to pay these bills was that there was no money available to pay the bills and that Kuhns knew this.

B. Discussion and Ultimate Findings

Since supervisors as such are excluded from the protection which Section 7 of the Act affords to statutory "employees,"⁷ usually the discharge of a supervisor is not violative of the Act. However, there are situations in which the discharge of a supervisor is violative of the Act because it infringes upon the employees' statutory rights. One situation where employees' statutory rights are infringed upon is where a supervisor is discharged for refusing to commit unfair labor practices. *Local No. 207, International Association of Bridge, Structural and Ornamental Iron Workers Union, et al. [William B. Pallack Co.] v. Jacob Perko*, 373 U.S. 701, 707 (1963); *Jackson Tile Manufacturing Company*, 122 NLRB 764, 767, 789-791 (1958), enf'd. 272 F.2d 181 (5th Cir. 1959); *N.L.R.B. v. I. D. Lowe, et al.*, 406 F.2d 1033, 1035 (6th Cir. 1968). This principle protects rank-and-file employees by permitting their supervisors to respect the employees' statutory rights without fear of reprisal.

In the instant case, counsel for the General Counsel contends that the record shows that Respondent discharged its general manager, Bansraj, because he failed to obey the instructions of Respondent's owner, Kuhns, to issue written disciplinary warnings to prounion employees. Under the above-described principles, if the General Counsel is correct in his assessment of the record, Bansraj's discharge violated Section 8(a)(1) of the Act. I am of the view, for the reasons set forth below, that the General Counsel proved a *prima facie* case that Bansraj's failure to issue written disciplinary warnings to prounion employees was a motivating factor in Respondent's decision to discharge him and that Respondent did not rebut the General Counsel's *prima facie* case.

As established by the Board's decision in Cases 20-CA-14319 and 20-CA-14456, *supra*, Respondent is extremely hostile to union representation and is not reluctant to discharge employees for supporting the Union or to otherwise engage in unfair labor practices in an effort to dissuade its employees from supporting the Union. And in June 1979 when Respondent's owner, Kuhns, realized he would have to reinstate the employees whom Respondent had discharged because of their union activities, Kuhns instructed Bansraj to maintain personnel files for the employees who were employed during the Union's organizational campaign and further instructed Bansraj that when Bansraj observed these employees engage in misconduct to issue them written disciplinary reprimands and to place a copy of said warnings in their personnel files. Respondent had previously not maintained such a system of discipline. Thereafter, on several occasions between June 1979 and Bansraj's discharge in July 1981, Kuhns told Bansraj to get rid of the prounion

⁵ The above description of the events immediately leading up to Bansraj's leaving for vacation on July 1, 1981, is based upon Bansraj's testimony which conflicts in significant respects with Garrett's. Garrett testified that on June 29 he asked Bansraj not to take his vacation because the "live show" was opening. That on June 30, when he phoned Bansraj at home, Garrett told him Kuhns did not want him to take his vacation because the "live show" was ready to open and since they were short of clerks they needed Bansraj's services and warned Bansraj that if he went on vacation he would lose his job. Bansraj told Garrett he had to take his vacation because he had already made the arrangements. Garrett repeated that if Bansraj went on vacation he would lose his job. Garrett specifically denies stating that Bansraj would be demoted from general manager to manager of the Taylor Street store and denies that Bansraj gave him the employees' personnel files before he left on vacation. I have rejected Garrett's testimony in favor of Bansraj's because in terms of their testimonial demeanor Bansraj impressed me as the more credible witness.

⁶ The above description of the July 14 conversation between Bansraj and Garrett is based on Bansraj's testimony which conflicts with Garrett's in significant respects. Garrett testified that when Bansraj told him he was back and wanted to start work that Garrett told him there was no job available for him and this ended the conversation. Garrett specifically denies giving Bansraj any reason for his termination or that there was any discussion about Bansraj returning to work as manager of the Taylor Street store. I have rejected Garrett's testimony in favor of Bansraj's because in terms of their testimonial demeanor Bansraj impressed me as the more credible witness.

⁷ Sec. 2(3) of the Act provides that the "term 'employee' . . . shall not include . . . any individual employed as a supervisor."

employees as quickly as possible, asked whether Bansraj was issuing the written disciplinary warnings to the employees and whether anyone had received sufficient warnings to be discharged. In response to Kuhns' inquiries about whether he was issuing written disciplinary warnings to the employees, Bansraj, who during this 2-year period only issued one written disciplinary warning, always answered in the affirmative. Since Bansraj kept the employees' personnel files in his briefcase and since Kuhns never asked to see any of the written disciplinary warnings which Bansraj was supposedly issuing to the employees, Kuhns did not realize that Bansraj was not issuing written disciplinary warnings to the employees. However, on July 1, 1981, Bansraj, before leaving for a 2-week vacation, gave the personnel files to Assistant Manager Kenneth Garrett, who lived with Kuhns. Upon Bansraj's return from vacation on July 14, 1981, Garrett told Bansraj that he had been discharged by Kuhns because he failed to pay Respondent's bills and taxes on time and that Kuhns discovered Bansraj was not issuing written disciplinary warnings to the employees who were union members and that because of Bansraj's failure to issue the written disciplinary warnings Kuhns could not get rid of the union members as quickly as he had intended. It is undisputed that Bansraj was unable to pay Respondent's bills because Respondent had insufficient funds and that Kuhns knew that this was the reason Bansraj had not paid the bills and taxes.

The foregoing circumstances—Respondent's extreme union animus, Respondent's desire to get rid of the prounion employees and his instruction that Bansraj issue written disciplinary warnings to these employees, the timing of Bansraj's discharge coming as it did immediately after Respondent learned Bansraj was not issuing written disciplinary warnings to the employees, Garrett's confession to Bansraj that Respondent discharged him because he had not issued written disciplinary warnings to the prounion employees thereby making it more difficult for Respondent to get rid of these employees, and the blatant falsity of the other reason offered to Bansraj by Garrett to justify his discharge—persuade me that the General Counsel has made a *prima facie* showing that it was Bansraj's failure to issue written disciplinary warnings to the prounion employees that was a motivating factor in Respondent's decision to discharge him.

I shall now describe and evaluate the evidence presented by Respondent in support of its contention that Bansraj's discharge was motivated by legitimate business considerations. Respondent called one witness, Assistant Manager Kenneth Garrett. He testified that on June 30 Respondent Kuhns was in the process of getting ready to stage a live show with dancing girls, and that on July 3 the show in fact opened. Garrett further testified that on June 29 Kuhns instructed him to tell Bansraj to postpone his vacation for a few weeks, explaining to Garrett that the live show was already to open and that because of this Bansraj's presence was needed. Kuhns also told Garrett, according to Garrett's testimony, that if Bansraj refused to postpone his vacation to advise Bansraj that his employment was terminated. I have rejected Garrett's testimony in its entirety because: (1) In terms of his testimonial demeanor Garrett did not impress me as being a

credible witness; (2) Respondent Kuhns, the person who made the decision to discharge Bansraj, was not called to corroborate Garrett's testimony or to otherwise explain his reason for discharging Bansraj; (3) Bansraj, who impressed me as a credible witness, testified that the live show was already open when he left for vacation, having opened June 26, 1981; and (4) Bansraj's testimony that the live show was already open when he left on vacation was corroborated by former employee Mahendre Prasad, who impressed me as a credible witness.

It is for the foregoing reasons that I have rejected Garrett's testimony and conclude that the reason he advanced for Bansraj's discharge was false. Accordingly, I further find that Respondent failed to demonstrate that it would have discharged Bansraj even if he had not failed to issue written disciplinary warnings to the employees who were union members.⁸

Based on the foregoing I find that the General Counsel has proven by a preponderance of the evidence that on July 14, 1981, Respondent discharged Bansraj because he failed to issue written disciplinary warnings to prounion employees. I further find that by engaging in this conduct Respondent interfered with, restrained, and coerced its nonsupervisory employees in the exercise of their rights guaranteed under Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. Respondent Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union, Retail Clerks Union, Local 648, United Food and Commercial Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging Subhas C. Bansraj on July 14, 1981, Respondent violated Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it cease and desist from its unlawful conduct and take affirmative action necessary to effectuate the policies of the Act. In view of the extensive and serious unfair labor practices which Respondent has been previously found to have committed (*Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand*, 247 NLRB 1212 (1980)), I shall also recommend that Respondent cease and desist from in any other manner infringing upon the rights of employees

⁸ I recognize that the record shows that Bansraj acted contrary to Respondent's instruction by failing to issue written disciplinary warnings to the employees in general, not just to the prounion employees. Nonetheless, the preponderance of the evidence as described above establishes that it was Respondent's animus against Bansraj for failing to issue warnings to prounion workers which resulted in his discharge.

guaranteed by Section 7 of the Act. See *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

I have found that Respondent discharged Subhas C. Bansraj and thereby, in violation of Section 8(a)(1) of the Act, interfered with, restrained, and coerced its nonsupervisory employees in the exercise of their rights guaranteed under Section 7 of the Act. In order to restore to the nonsupervisory employees their full freedom to exercise these rights and thus to effectuate the policies of the Act, I shall recommend the reinstatement with backpay of Bansraj. Accordingly, I shall recommend that Respondent offer him reinstatement to the position of manager of Respondent's Taylor Street store⁹ or, if that position no longer exists, to a substantially equivalent one, without prejudice to his seniority and other rights and privileges previously enjoyed, and that he be made whole for any loss of pay suffered as a result of his discharge, as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹⁰

The Respondent, Earl Kuhns, d/b/a Frenchy's K & T and Earl's News Stand, San Francisco, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

⁹ I have not recommended Bansraj's reinstatement to the position of general manager because the record establishes that on June 30, 1981, when Bansraj refused to postpone his vacation, that Respondent, prior to learning that Bansraj was not issuing written disciplinary warnings to the prounion employees, had decided to demote Bansraj when he returned from vacation to the position of manager of the Taylor Street store.

¹⁰ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(a) Discharging or otherwise disciplining any supervisor because said supervisor failed or refused to interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act.

(b) In any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action in order to effectuate the policies of the Act:

(a) Offer Subhas C. Bansraj immediate and full reinstatement to the position of manager of Respondent's Taylor Street store or, if such position does not exist, to a substantially equivalent one, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings suffered as the result of his discharge on June 14, 1981, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its stores in San Francisco, California, copies of the attached notice marked "Appendix."¹¹ Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

¹¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."